

REMARKS

Claims 6-20 were examined and reported in the Office Action. Claims 1-49 are rejected. Claims 6, 8-11, 13-16 and 18-20 are amended. Claims 6-20 remain.

Applicant requests reconsideration of the application in view of the following remarks.

I. 35 U.S.C. §101

It is asserted in the Office Action that claims 6-10 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Applicant had previously amended the specification to remove “biological electrical, mechanical systems; electrical, optical, acoustical or other form of propagated signals (e.g., carrier waves, infrared signals, digital signals, etc.)” from the description. Applicant notes that claims 6-10 and the amended specification do not pertain to a machine readable medium that includes propagated signals, such as carrier waves. Applicant does not intend to claim such limitations.

Accordingly, withdrawal of the 35 U.S.C. §101 rejections for claims 1-10 are respectfully requested.

II. 35 U.S.C. §112

It is asserted in the Office Action that claims 8-10, 13-15 and 18-20 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claims 8-10, 13-15 and 18-20 to overcome the 35 U.S.C. §112, second paragraph rejections.

Accordingly, withdrawal of the 35 U.S.C. §112, second paragraph, rejections for claims 8-10, 13-15 and 18-20 are respectfully requested.

III. 35 U.S.C. §103(a)

It is asserted in the Office Action that claims 6-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Patent No. 4,961,141 issued to Hopkins et al ("Hopkins") in view of Auslander et al. ("Fast, Effective Dynamic ACM page 149-159, 1996") ("Auslander"). Applicant respectfully traverses the aforementioned rejection for the following reasons.

According to MPEP §2142

[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that 'rejections on obviousness cannot be sustained with mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.' *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

Further, according to MPEP §2143, "[T]he Supreme Court in *KSR International Co. v. Teleflex, Inc.* 550 U.S. ___, ___, 82 USPQ2d 1395-1397 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham*." Further, according to MPEP §2143.01, [o]bviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Further, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art." *KSR International Co. v. Teleflex, Inc.* 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007). Additionally, according to MPEP §2143

[a] statement that modification of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art

at the time the claimed invention was made” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Pat. App. & Inter. 1993).

It is asserted in the Office Action that because Hopkins discloses that for each equivalence class, forming the logical OR function of register usage information for all symbolic registers in the class,” that Hopkins discloses assigning a first register class to at least one symbolic register in at least one instruction. Applicant’s amended claims 6, 11 and 16 include the limitations of “each instruction includes assignment of one of the first register class assigned and the second register class assigned.” (See e.g., Applicant’s specification, paragraph [0033]). Hopkins does not teach, disclose or suggest including assignments in every instruction.

Auslander is relied on for teaching use of conjunctive forward dataflow analysis. Even if Auslander is combined with Hopkins, the resulting invention would fail to teach or suggest that “each instruction includes assignment of one of the first register class assigned and the second register class assigned.” Further, the assertions made in the Office Action on page 5 that lead to a conclusion of obviousness are not explicit and the basic requirements of an articulated rationale under MPEP 2143 cannot be found.

Additionally, since neither Hopkins, Auslander, and therefore, nor the combination of the two, teach, disclose or suggest all the limitations of Applicant’s amended claim 6, 11 and 16, as listed above, Applicant’s amended claims 6, 11 and 16 are not obvious over Hopkins in view of Auslander since a *prima facie* case of obviousness has not been met under MPEP §2142. Additionally, the claims that directly or indirectly depend from amended claims 6, 11 and 16, namely claims 7-10, 12-15, and 17-20, respectively, would also not be obvious over Hopkins in view of Auslander for the same reason.

Accordingly, withdrawal of the 35 U.S.C. §103(a) rejections for claims 6-20 are respectfully requested.

CONCLUSION

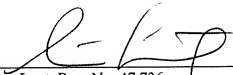
In view of the foregoing, it is believed that all claims now pending, namely 6-20, patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,

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Suzanne Johnston

10/31/07

Date